Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 163

WESTERN CARTRIDGE COMPANY AND WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, ETC., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED JULY 14, 1941

[fol. 1] At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

* * * * * * *

8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents,

* * * * * * *

8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

* * * * * * *

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board

And to-wit: On the twentieth day of October, 1942, there was filed in the office of the Clerk of this Court, a Petition for a Review and the Setting Aside of an Order of the National Labor Relations Board, which said Petition is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

And, to-wit: On the eighteenth day of November, 1942, there was filed in the office of the Clerk of this Court, a Petition to review and set aside an Order of the National

139701

Labor Relations Board, which said Petition is not copied here as the same is certified herewith under a seperate certificate.

* * * * * * *

And, to-wit: On the seventh day of December, 1942, there was filed in the office of the Clerk of this Court, an Answer of the National Labor Relations Board and Request for Enforcement, which said Answer is in the words and figures following, to-wit:

[fol. 2] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

On Petition to Review and Set Aside an Order of the National Labor Relations Board

Answer of the National Labor Relations Board and Request for Enforcement

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), files this answer to the petition to review an order of the Board, filed herein, and this request for enforcement of the Board's order.

(1) Answering the allegations of the petition to review on pages 2 and 3 entitled, "Statement of the Nature of the Proceedings," the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.

[fol. 3] (2) The Board admits the allegations on pages 3 and 4 of the petition to review entitled, "Venue".

(3) The Board denies each and every allegation of error set forth under the caption "Statement of Points" on pages 4 to 11, inclusive, of the petition to review.

Wherefore, having answered each and every allegation contained in the petition to review, the Board requests this Honorable Court to deny said petition insofar as it requests that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10(e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order against petitioner dated September 16, 1942, entered in the proceeding before the Board entitled, "*In the Matter of Western Cartridge Company, a corporation,* and *American Federation of Labor and its affiliated organizations,*" which proceeding is designated in the records of the Board as Case No. C-2123. In support of its request for enforcement of this order, the Board alleges:

(a) Petitioner, a Delaware corporation, transacts business and has a manufacturing plant in the City of East Alton, Illinois; and the unfair labor practices occurred at that plant.

(b) Upon the proceedings had before the Board in Case No. C-2123, including, without limitation, the complaint, the answers, the hearing for the purpose of taking testimony, the Trial Examiner's Intermediate Report, the exceptions filed thereto, and the oral argument before the Board, more fully shown by the transcript of the entire record filed herein, to which reference is hereby made, the Board, on September 16, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the Na-
[fol. 4] tional Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Western Cartridge Company, East Alton, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreements of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any

of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

[fol. 5] (c) Make whole William Elliott for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that the respondent will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with the respondent or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) to (d) of this Order; and (3) that the respondent's employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee

because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(c) Thereafter, on September 16, 1942, the Board duly served the aforesaid decision and order upon petitioner.

Wherefore, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the entire record in said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and proceedings set forth in the transcript of said proceed-
[fol. 6] ings and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

[fol. 7] District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board; that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge and belief.

(S.) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942. (S.) Joseph W. Kulkis, Notary Public, District of Columbia. My Commission expires April 15, 1947. (Seal.)

[fol. 8] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS, Respondents

On Petition to Review and Set Aside an Order of the National Labor Relations Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., sec. 151, *et seq.*), files this answer to the petition filed herein to review and set aside the Board's order.

1. Answering the allegations of the petition relating to the proceedings before the Board, the Board prays reference, for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, to the certified record of the proceedings before the Board filed in *Western Cartridge Company, a Corporation* v. *National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations*, No. 8142, which case was initiated by the petition of the Western Cartridge Company for review of the Board's order issued in the proceedings before the Board known as Case No. [fol. 9] C-2123 entitled *"In the Matter of Western Cartridge Company* and *American Federation of Labor and Its Affiliated Organizations."*

2. The Board denies each and every allegation of error contained in the petition.

Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and its order are in all respects valid and proper under the Act.

Wherefore, the Board respectfully prays this Honorable Court that the petition for review be denied, and the Board further prays that this Honorable Court cause notice of the filing of its answer to be served upon petitioner.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December 1942.

[fol. 10] District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(S.) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942. (S.) Joseph W. Kulkis, Notary Public, District of Columbia. My Commission expires April 15, 1947. (Seal.)

[fol. 11] And on the same day, to-wit: On the seventh day of December, 1942, there was filed in the office of the Clerk of this Court, a Motion for Consolidation, which said Motion is in the words and figures following, to-wit:

[fol. 12] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondent

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

Motion for Consolidation

Comes now the National Labor Relations Board and moves the Court for an order consolidating the above captioned causes for the purposes of briefing and argument.

On October 20, 1942, Western Cartridge Company filed a petition to review and set aside an order of the Board in Case No. C-2123, said cause being No. 8142 in this Court. On November 18, 1942, Western Cartridge Employees' Independent Union filed in this Court a petition to review and set aside the same order of the Board, said cause being No. 8155 in this Court. The Board respectfully represents that the issues involved in these causes are the same and can be satisfactorily argued, briefed and determined in one proceeding before this Court.

[fol. 13] Wherefore it is respectfully prayed that an order be made and entered consolidating the above captioned causes for the purposes of briefing and argument.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

[fol. 14] And afterwards to-wit: On the twelveth day of December, 1942, the following further proceedings were had and entered of record, to-wit:

Saturday, December, 1942.

Court met pursuant to adjournment.

Before: Hon. Will M. Sparks, Circuit Judge.

Petitions to Review and set aside, and on request for enforcement of, and Order of the National Labor Relations Board

8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

On Motion of counsel for Respondent, not objected to by counsel for Petitioners, it is ordered that the above entitled appeals be, and they are hereby, consolidated for purposes of briefing and argument.

* * * * * * *

And afterwards, to-wit: On the sixteenth day of January, 1943, there was filed in the office of the Clerk of this Court, a Supplement to Brief of Petitioner, Western Cartridge Company, which said Supplement is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

And afterwards, to-wit: On the twenty-second day of January, 1943, there was filed in the office of the Clerk of this Court, the Appendix to Respondents' Brief, which said

Appendix is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

[fol. 15] And afterwards, to-wit: On the first day of March, 1943, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

[fol. 16] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1942, JANUARY SESSION, 1943

No. 8142, No. 8155

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner,

vs.

NATION LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

March 1, 1943

Before Evans, Minton, and Kerner, Circuit Judges

KERNER, Circuit Judge:

These cases are here on separate petitions by Western Cartridge Company (hereinafter referred to as "Company") and the Western Cartridge Employees' Independent Union (hereinafter referred to as "Independent") to review and set aside, and on request by the National Labor [fol. 17] Relations Board for the enforcement of, an order [1]

[1] 44 N. L. R. B. 1.

of the Board, issued pursuant to the provisions of § 10 (c) of the National Labor Relations Act, 29 U. S. C. A. § 151 *et seq.*, requiring the employer (1) to cease and desist from (a) giving effect to its individual contracts of employment with employees etc., (b) dominating Independent, (c) recognizing Independent, (d) giving effect to its certain agreements with Independent in respect to rates of pay, etc., (e) discouraging membership in the International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, (f) in any other manner interfering with its employees in the exercise of their rights under § 7 of the Act; and (2), affirmatively to (a) withdraw all recognition from Independent, (b) offer William Elliott full reinstatement, and (c) make him whole for loss of pay.

The company is a Delaware corporation engaged in the manufacture of munitions and has more than 6000 employees at its East Alton, Illinois, plant. Jurisdiction is not in dispute.

The proceeding before the Board was instituted by the American Federation of Labor and charged that the company, in order to create a barrier to union organization among its employees, induced its employees to sign individual contracts which infringe rights guaranteed by the Act; that by continuing that practice after the effective date of the Act, the company violated § 8 (1); that it disparaged outside unions and warned its employees not to join such unions; and that by dominating and interfering with the formation of Independent and contributing to its support, and by discharging William Elliott, it violated § 8 (1)(2) and (3) of the Act.

The questions presented are (1) whether the Board's findings of fact concerning the unfair labor practices are supported by the evidence; (2) whether the Independent was accorded a fair hearing; and (3) whether the order is valid.

The record discloses that from 1915 to 1921 the company followed the practice of having its employees sign individual contracts, which, if lived up to, assured the employees of a bonus. It ceased its practice in 1921 because of the depression, but revived the practice in 1933, when [fol. 18] business was at a very low ebb and when there was much industrial unrest resulting in part from unionization.

The Company, since July, 1933, has urged its employees to sign the individual contracts. After three months' service, all new employees are either sent to the Personnel Department by their foremen or given notice to report there for an interview. In these interviews, the employees are told of the benefits which the contract provides and are urged to sign. They were told in writing that "The signing of such a contract is optional on your part." When a contract is about to expire, the employee is notified to report to the contract office for the purpose of signing a renewal. The contract is for a fixed term, either six months or one year, and obligates the employee to devote his full time throughout that term to the business of the company; breach of that undertaking entails, at the option of the company, the employee's immediate suspension or dismissal, and its faithful performance is made a condition precedent to the employee's receiving the bonus stipulated for in the contract. To obtain the bonus, the employee must continue in the employ of the company for the entire period of his contract. The contract also provides that the company may terminate it in the event of the "non-operation, or the material curtailment of the operations, of the plant * * * due to * * * strikes." The employee in such case forfeits the bonus plus any sum which the company has deducted from his wages pursuant to the contract if the contingency resulting in the shut-down or curtailment is due "to the fault of the employee."

About July 8, 1941, the company incorporated the East Alton Manufacturing Company, a Maryland corporation, which took over the operation of the smokeless powder division, and on August 2, the new corporation entered into a collective agreement with Local 22574, concerning which more anon, providing, among other things, that the individual contracts between the company and some 423 employees of the smokeless powder division should not be assigned to the new company, and that like contracts should not in the future be offered the employees of that division.

During the summer of 1933 a group of the company's employees began to discuss the question of whether they desired a company union or no union at all, and the subject was violently agitated throughout the plant. Thereupon, [fol. 19] Vice-President Olin addressed a mass meeting of the employees and discussed with them the possibility of

forming an employees representation plan, such as the company's Works Council Plan at New Haven.

There was no union among the company's employees from 1933 to 1937, but in the spring of 1937, after several C. I. O. organizing meetings had been held and some of the employees had signed applications for membership, steps were taken at the plant to oppose that movement and to organize the Independent. Charles Taylor, a machinist, was its principal organizer. He discussed plans for this organization with other employees, but before going ahead with its formation, Taylor called on General Manager Bassett to inquire whether the company had any objection to the formation of the Independent and whether the rights of the employees under the individual contracts would be adversely affected by the formation of the Independent. Bassett replied that they would not be, that the company would not object to the inside union provided the employees "stayed within their rights," and did not solicit members on company time and property. June 4, 1937, Taylor and his associates engaged an attorney and launched a membership drive during working hours, at times in the presence of foremen. The record does not disclose that the company voiced any objection to the use of its time for this purpose. June 25, 1937, Independent requested recognition and on July 26, submitted to the company a prepared working agreement. August 10, the company submitted to Independent a contract to remain in force for one year and thereafter until terminated by a prescribed written notice, recognizing Independent as the bargaining agent of the company's employees "with respect to all matters not covered by the contracts of employment between the Company and those of its employees who have made them"; stipulating that "neither the company nor the Independent admit or assert any right to change said contracts of employment without the consent of the parties thereto"; and providing "that if the parties should from time to time agree that a modification of the individual contract was desirable, the proposed change would be 'recommended' to the employees." This contract was executed on August 12, 1937.

In January, 1941, a campaign to organize the employees in the smokeless powder division was commenced and on [fol. 20] January 31 a mass meeting of these employees was

held, at which a large number signed applications for membership in the American Federation of Labor. February 5, Local 22574 was chartered, and on March 13 it asked for recognition which was denied on the ground that the unit was inappropriate. Thereupon, this local petitioned the Board requesting certification in the smokeless powder division. June 13, following an election, the Board certified the local as the exclusive bargaining representative in that division. After the local had won the election, the company disregarded the Board's unit determination, continued to recognize the Independent as the bargaining agent for all employees in the plant, and entered into a working agreement with the Independent.

The record also discloses that from 1937 to December, 1940, the membership of the Independent declined and that its position was being threatened by the campaign of the A. F. of L. To offset this advance, Independent's executive committee, in November 1940, appealed to Bassett and requested him "to do something to keep the [Independent's] membership up." The committee was informed that the company had authorized a wage bonus of two per cent to be given the signers of the individual contracts and that "if the union [Independent] got credit for it, it would build * * * [Independent's] membership up." After this conference, a notice to that effect was posted on the bulletin board. It also appears that throughout this period, particularly after the A. F. of L. had commenced its campaign, the company engaged in varied coercive measures to keep the employees from joining the A. F. of L. It will not be necessary to recite such evidence in detail. We cite, for example, the instance in which the superintendent of the smokeless powder division sent for the president of Local 22574 and said to him: "I expected a rough sort of a fellow—being mixed up with a union like you are," and told him that the union was "no good," adding revealingly, "Why don't you come in as a committee and talk with me about it instead of going over to East St. Louis and get[ting] a pot-bellied racketeer to do your business for you?" men who were "bosses and wouldn't work," men who "lived off the wages of employees paid out in union dues."

The company argues that under the language of *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 45, [fol. 21] its duty to bargain collectively with representa-

tives of its employees does not preclude such individual contracts as it might elect to make directly with individual employees.

A similar contention was made in *National Labor Relations Board* v. *J. I. Case Company,* decided by this court on February 26, 1943, in which the respondent tendered to each of its employees a contract, execution being voluntary, fixing wages and terms of employment. A union certified as the exclusive bargaining representative requested the respondent to bargain collectively with it. Respondent refused on the ground it could not negotiate with the union in any matter affecting the rights and obligations of respondent and its employees "under the individual contracts." We indicated our belief that other decisions of the Supreme Court established the rule that any existing contractual right interfering with the effectuation of the legislative intent must yield to the duty imposed upon both employer and employee, and that contracts must be understood as having been made not only with reference to existing legislation, but also with reference to the possible exercise of the rightful authority of the Government, and that no obligation of contract may be invoked to defeat that authority. And we held that the power and right of the employer and employee to enter into individual contracts must be subordinated to and so effectuated as not to interfere with full achievement of the purpose of the Act.

The principal question in this case is whether the Board's findings of facts are supported by substantial evidence—that the company dominated and interfered with the formation of Independent, and whether the Board was justified in its conclusion that the company's conduct toward Local 22574 amounted to interference with its employees in the exercise of their rights under § 7 of the Act.

The company contends that the Board was not justified in finding that by urging and persuading its employees to sign the individual contracts after the Act went into effect, it had interfered with the employees' right to self-organization.

As to this aspect of the case, there is no dispute as to the evidence. That being so, the question is, what inference should be drawn from the evidence? That function belongs to the Board. Nor does the possibility of drawing either of two inconsistent inferences from the evidence pre-

[fol. 22] vent the Board from drawing one of them. *National Labor Relations Board* v. *Nevada etc.*, 316 U. S. 105. The Board found that the effect of the contracts has been to forestall union activity among the company's employees and to create a permanent barrier to union organization among them. We agree with counsel for the Board that interference is no less interference because it is accomplished through allurements rather than coercion, when, as here, the system is employed to stem a tide of organization and is adopted as a means of eliminating outside unions as collective bargaining agents of the company's employees, *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350. Such attempts have been condemned, *National Labor Relations Board* v. *Martin Bros. Box Co.*, 130 F. (2) 202.

The company and the Independent contend that the fact that the company welcomed the organization of the Independent, extended privileges to it and preferred that union to any other, does not constitute discrimination, domination of or interference with such union. With this contention, under the circumstances here appearing, we cannot agree. The employees must be free from all restraint or coercion by the employer. This freedom is their legal right. The Act imposes upon an employer total and complete impartiality, necessitating the utmost of honest neutrality, *Valley Mould etc.* v. *National Labor Relations Board*, 116 F. (2) 760, 764. Even slight suggestions as to the employer's choice between unions may have telling effects, *International Association of Machinists etc.* v. *National Labor Relations Board*, 311 U. S. 72. The conduct of the company fell far short of the required standard. Here there was open and known hostility to one union and clear discrimination against it. *International Association of Machinists etc.* v. *National Labor Relations Board*, *supra*, 78. The company's officials exerted great efforts to sustain, and urged its employees to support, the Independent; it vilified leaders of the A. F. of L. union, disparaged that union as "no good," and attempted to bolster up the Independent as a buffer against the A. F. of L.—all these tactics indicating a design to strengthen the Independent. Certainly such actions were not conducive of the neutrality and impartiality required by the Act. In our opinion it constituted a violation of § 8(1)(2) of the Act. *Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514.

[fol. 23] The company also argues that its conduct was innocuous, that there was no domination, and that such statements as were made were "utterly ineffective," that not one of the employees had "joined the Independent because of any such statements or had refrained from joining, or had withdrawn from Local 22574." It will be enough to say that it is not necessary that the coercive conduct had its intended or desired effect, *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584. It is only necessary to show that the employer interfered, restrained, or coerced. *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. (2) 452, 457.

Independent contends that because the trial examiner refused to permit individual members of the Independent to testify with respect to the reasons why and the circumstances under which they had joined, it was denied a fair hearing. The argument is that such testimony was material and tended to prove that these employees had joined the Independent of their own free will, and to disprove interference by the company.

To be sure, as a general rule, findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, the Board's findings is heard and weighed, *National Labor Relations Board* v. *Indiana and Michigan, etc.*, Supreme Court, January 18, 1943. Uncontradicted testimony of a large number of employees to the effect that they were free from coercion and under no sense of constraint cannot avail the Independent, *Bethlehem etc.* v. *National Labor Relations Board*, 114 F. (2) 930, 937, and *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2) 60, 62, and a showing of non-coercion in one instance does not disprove an affirmative showing of coercion in another instance, *United States* v. *General Motors Corp.*, 121 F. (2) 376, 405. The recognition of constraint calls for a high degree of introspective perception, *Bethlehem Shipbuilding* case, *supra*, 937, and it would be a rare case where the finders of fact could probe the precise factors of motivation underlying each employee's choice. Normally, the conclusion that the employees' choice was restrained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible, and [fol. 24] as a result of which it may reasonably be inferred

that the employees did not have that complete and unfettered freedom of choice which the Act contemplates. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588.

In the instant case, the record discloses that the examiner permitted Independent to adduce the testimony of witnesses who had participated in its organization as to their reasons for joining, but that he refused to receive the testimony of several thousand employees as to their reasons for joining the Independent after its formation.

The Board found as a fact that the company had interfered with the formation of the Independent, basing its findings upon the evidence earlier set forth in this opinion disclosing favors granted by the company to the Independent, and upon the evidence showing the unswerving purpose of the company to repel outside unions. Under such circumstances, the rejected testimony being cumulative and when viewed against the cogent, specific evidence of the company's interference, we cannot say that there was an abuse of discretion and that the Independent had not received a fair hearing.

The Independent next contends that there is no substantial evidence justifying its disestablishment. We have been told frequently that if the findings of the Board are supported by substantial evidence, they are conclusive, and the Supreme Court has been insistent that the admonition be strictly observed, *National Labor Relations Board* v. *Indiana & Michigan etc., supra.* We have already observed that the facts set out above furnish substantial evidence for the conclusion that the company had interfered with its employees in the exercise of their rights and that it had interfered with the formation of the Independent. Such evidence justified the Board's order of disestablishment.

We now pass to the discharge of William Elliott, who entered the employ of the company in 1925, his last period of employment continuing from 1930 until July 25, 1941, when he was discharged, as claimed by the company, because he was a "disgruntled, dissatisfied employee, highly critical of the management and everything that the management did in running the business, and one who did not hesitate to express his feelings openly * * *, not only to his superior officers, but to his fellow employees."

[fol. 25] The record discloses that during the period of his employment, Elliott was a good workman. In 1941 he became the representative of the Independent and in the spring of that year, when the American Federation of Labor was waging its campaign, he was chided by Superintendent Day for not being more aggressive in discharging his duties as such representative. Day testified that part of the reason for discharging Elliott was his failure to represent the Independent in a manner satisfactory to the company. Elliott resigned from the Independent and in July joined the A. F. of L. July 23, 1941, he was elected financial secretary of Local 333, and his election immediately became known to the supervisors. He was discharged July 25. The Board found that the company knew and accepted Elliott as an outspoken and critical employee, and had expressed no disapproval of his critical attitude until he abandoned the Independent and became active in Local 333; that Elliott's failure to act as the Independent's representative was a factor motivating his discharge; and that Elliott's critical attitude was used as a pretext to justify his discharge. The evidence supports these findings. They are binding upon this court.

Finally, the company contends that the order is illegal. The decision of the Board provides that nothing in the order shall be taken to require the company "to vary those wage, hours, and other substantive features of its relations with the employees themselves, which the respondent [company] has established in the performance of such agreements." We think that paragraphs 1(f) requiring the company to cease and desist from "in any other manner" interfering with the exercise by its employees of the rights guaranteed them by § 7 of the Act, 1(a) directing the company to cease giving effect to the individual contracts (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), and 2(d) instructing the company to notify its employees that it will not enforce the contracts or in the future require such contracts to be executed, are in conformity with the orders approved in *National Labor Relations Board* v. *Express Co.*, 312 U. S. 426, 438, and *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 364, 367.

We conclude the order is legal; consequently, the peti-
[fol. 26] tion to set aside the Board's order will be denied, and the request for its enforcement will be granted.

It is so Ordered.

A true Copy: Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 27] And afterwards, to-wit: On the nineteenth day of March, 1943, there was filed in the office of the Clerk of this Court, Petitioners Motion to Modify Opinion, which said Motion is in the words and figures following, to-wit:

[fol. 28] In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1942, January Session, 1943

No. 8142, No. 8155

Western Cartridge Company, a Corporation, Petitioner,

vs.

National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents

Western Cartridge Employees' Independent Union, Etc., Petitioner,

vs.

National Labor Relations Board, American Federation of Labor and Its Affiliated Organizations, Respondents

Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board

Petitioner Western Cartridge Company's Motion to Modify Opinion

Comes now petitioner Western Cartridge Company, and moves the Court to modify its opinion filed in the above

entitled cause on March 1, 1943, in the following respects and for the following reasons, to-wit:

By clarifying the statement contained on page 10, lines 29 to 42, that Paragraphs

"1 (a) directing the company to cease giving effect to the individual contracts (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), and 2 (d) instructing the company to notify its employees that it will not enforce the contracts [fol. 29] * * * are in conformity with the orders approved in National Labor Relations Board v. Express Co., 312 U. S. 426, 438, and National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 364, 367"

and the statement contained on page 11 that

"the request for its (the Board's order) enforcement will be granted."

This language of the Court, as well as the draft of the proposed decree which has been submitted by the Board, leave the petitioner uncertain as to exactly what it is directed to do or to refrain from doing in connection with the discontinuance of the individual contracts. It should be borne in mind that these individual contracts provide not only for a savings plan, which includes the payment by the company to the employees of six per cent interest on their savings, but also for the payment of a cash bonus upon certain terms and conditions therein set forth.

The Board's order and the proposed decree direct the company to "Cease and desist from: (a) Giving effect to its individual contracts of employment with employees". The proposed decree adds to this direction the qualification "(without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts)". The Board's order and proposed decree also direct the company to give separate written notice to each of its employees who has signed such an individual contract of employment "that it will not in any manner enforce or attempt to enforce the contract * * * and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;".

It would appear that the language used by the Court in its opinion and by the Board in its order and draft of proposed decree is susceptible to any one of the three following interpretations:

[fol. 30] (1) That the company should not give or offer to give to any employee now holding an individual contract any accrued interest on savings or any accrued bonus;

(2) That the company should give to each employee now holding an individual contract interest accrued to the effective date of the order, and any bonus which may have accrued up to the effective date of the order; or

(3) That the company should permit employees now holding such contracts to continue their savings plans in effect, and, at the expiration of the term of each contract, if the employee has complied with the terms thereof, pay him the accrued savings, interest and bonus as therein provided.

In view of the fact that the adoption by the petitioner of any one of the above possible interpretations might subject it to contempt of Court proceedings, petitioner requests the Court to modify and clarify its opinion, and to so draft any decree which may be entered pursuant to said opinion, as to eliminate any possible ambiguity, and to make it clear what procedure petitioner should follow with respect to the savings and bonus plans under the individual contracts now in effect.

Respectfully submitted, R. H. McRoberts, 1630 Boatmen's Bank Bldg., St. Louis, Missouri, Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri, Of Counsel.

March 15th, 1943.

[fol. 31] And afterwards, to-wit: On the thirtieth day of April, 1943, there was filed in the office of the Clerk of this Court, a Motion for Stay of Execution and Enforcement, which said Motion is in the words and figures following, to-wit:

[fol. 32] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and ITS AFFILIATED ORGANIZATIONS, Respondents.

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc., Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and ITS AFFILIATED ORGANIZATIONS, Respondents

On Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board

MOTION FOR STAY OF EXECUTION AND ENFORCEMENT

Comes now Western Cartridge Company, one of the petitioners in the above consolidated cause, and respectfully shows to this Honorable Court that it intends to and will file in the Supreme Court of the United States a petition for a writ of certiorari to review the opinion and decision rendered by this Honorable Court in the above entitled cause on March 1, 1943, and the decree pursuant thereto made and entered herein on April 14, 1943.

Wherefore, the petitioner Western Cartridge Company prays that this Court may stay the execution and enforcement of such opinion, decision and decree, and the issuance of the mandate pursuant thereto, for a reasonable time, pre-

ferably not less than sixty (60) days, within which to allow the petitioner to file in the Supreme Court of the United States such petition for a writ of certiorari.

R. H. McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri, Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri, Of Counsel.

[fol. 33] R. H. McRoberts, attorney for Western Cartridge Company, one of the petitioners in the above enttiled cause, hereby certifies that he has been directed by his client, Western Cartridge Company, to take all necessary steps to obtain a review by the Supreme Court of the United States of the opinion and decision rendered by this Honorable Court in the above cause on March 1, 1943, and the decree made and entered therein on April 14, 1943; that pursuant thereto he will file in the Supreme Court of the United States a petition for a writ of certiorari to review the said opinion, decision and decree of this Honorable Court; that said proceedings are and will be taken in good faith in the honest belief that the aforesaid opinion, decision and decree of this Court are erroneous, and because the petitioner is aggrieved by the said opinion, decision and decree; and that the aforesaid application to this Court for stay of execution and enforcement and to withhold issuance of its mandate is not filed, and the petition for a writ of certiorari which will be filed in the Supreme Court of the United States will not be filed, for purposes of delay.

R. H. McRoberts, Attorney for Petitioner, Western Cartridge Company.

[fol. 34] And afterwards, to-wit, on the 14th day of April, 1943, the following further proceedings were had and entered of record, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SEVENTH CIRCUIT

October Term, 1942

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respdndents

On Petitions to Review and Set Aside, and On Request for Enforcement of, An Order of the National Labor Relations Board

Decree

This cause having come on to be heard upon separate petitions to review and set aside an order of the National Labor Relations Board against Western Cartridge Company, filed respectively on October 20, 1942, and November 18, 1942; and upon an Answer to said petitions filed by the Board on December 4, 1942, requesting this Court to enforce its order; and the Court on March 1, 1943, having rendered its opinion with respect thereto, accordingly, in conformity therewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Western Cartridge Company, its officers and agents, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees (without prejudice to the assertion by

the employees of any legal rights they may have acquired [fol. 35] under such contracts), or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreements of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

[fol. 36] 2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with it con-

cerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(c) Make whole William Elliott for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of an offer of reinstatement which conforms to the requirements of Section 2 (b) of this Decree, less his net earnings during such period.

(d) Give separate written notice to each if its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that it will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with it or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that it will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Decree; (2) that [fol. 37] it will take the affirmative action set forth in paragraphs 2(a) to (d) of this Decree; and (3) that its employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that it will not discriminate against any employee because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Decree what steps it has taken to comply herewith.

Evan A. Evans, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Otto Kerner, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Sherman Minton, Judge, United States Circuit Court of Appeals for the Seventh Circuit.

Apr. 14, 1943.

[fol. 38] And on the same day, to-wit: On the thirtieth day of April, 1943, the following further proceedings were had and entered of record, to-wit:

Friday, April 30, 1943.

Court met pursuant to adjournment.
Before Hon. Otto Kerner, Circuit Judge.

8142

Western Cartridge Company, a Corporation, Petitioner,

vs.

National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents.

8155

Western Cartridge Employees' Independent Union, a Voluntary Association and Trade Uunon, Petitioner,

vs.

Naoinal Laeor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents.

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board.

On motion of counsel for Western Cartridge Company, it is ordered that the execution and enforcement of the de-

cree herein be, and it is hereby, stayed for a period of sixty days.

[fol. 39] And afterwards, to-wit: On the seventh day of July, 1943, there was filed in the office of the Clerk of this Court, a Designation for Record on Petition for Writ of Certiorari, which said designation is in the words and figures following, to-wit:

[fol. 40] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, *Etc.*, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

PRAECIPE FOR RECORD

To Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please prepare certified transcript of the record in the above entitled cause for filing in the United States Supreme Court, pursuant to Supreme Court Rule 38, including

1. Printed Supplement to Brief of Petitioner Western Cartridge Company.

2. Printed Appendix to Respondents' Brief.

3. Entire proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, including, but without limitation—

(a) Petition for Review and the Setting Aside of an Order of the National Labor Relations Board of Western Cartridge Company, No. 8142.

(b) Petition to Review and Set Aside an Order of the National Labor Relations Board of Western Cartridge Employees' Independent Union, No. 8155.

[fol. 41] (c) Answer of National Labor Relations Board and Request for Enforcement (Case No. 8142).

(d) Answer of National Labor Relations Board (Case No. 8155).

(e) Motion for Consolidation.

(f) Order of Consolidation.

(g) Opinion of the Court dated March 1, 1943.

(h) Petitioner Western Cartridge Company's Motion to Modify Opinion.

(i) Decree entered April 14, 1943.

(j.) Motion for Stay of Execution and Enforcement.

(k) Order Staying Execution.

R. H. McRoberts 1630 Boatmen's Bank Building, St. Louis, Missouri. Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri. Of Counsel.

[fol. 42] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the proceedings had and papers filed as called for by the designation on petition for writ of Certiorari, filed on: July 7, 1943, in:

Western Cartridge Company, a Corporation, Petitioner,

8142 vs.

National Labor Relations Board and American Federation of Labor and its Affiliated Organizations, Respondents,

Western Cartridge Employees' Independent Union, Etc., Petitioners,

8155 vs.

National Labor Relations Board, American Federation of Labor and its Affiliated Organizations, Respondents, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 8th day of July A. D. 1943.

Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal.)

No. 163

Office - Supreme Court, U. S.
FILED
JUL 14 1943
CHARLES ELMORE CROPLEY
CLERK

United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY,
a Corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. 8142
Civil.

PETITION

For a Review and the Setting Aside of an Order of the National Labor Relations Board.

R. H. McROBERTS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Attorney for Petitioner.

BRYAN, WILLIAMS, CAVE & McPHEETERS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Of Counsel.

U. S. C. C. A. - 7
FILED
OCT 20 1942
KENNETH J. CARRICK
CLERK

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

SUBJECT INDEX.

	Page
Prayer to review and set aside decision of National Labor Relations Board	1
Statement of the nature of the proceedings	2
Venue	3
Relief prayed	4
Statement of points	4

United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner, vs. NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. ....., Civil.

PETITION

For a Review and the Setting Aside of an Order of the National Labor Relations Board.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes Western Cartridge Company, a corporation, and prays the Court to review and set aside the decision and order of the National Labor Relations Board made and entered on the 16th day of September, 1942, in Case No. C-2123, then pending before said Board, entitled, "In the Matter of Western Cartridge Company, a corporation, and American Federation of Labor and its Affiliated Organizations."

STATEMENT OF THE NATURE OF THE PROCEEDINGS.

The proceedings originated in a second amended charge filed on November 19, 1941, by the American Federation of Labor and its affiliated organizations with the National Labor Relations Board, upon which the Regional Director for the Fourteenth Region (St. Louis, Missouri) issued its complaint dated November 19, 1941, against Western Cartridge Company, alleging that the said company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449. With respect to the alleged unfair labor practices, the complaint alleged, in substance:

(1) That the said company, on or about June 4, 1937, instigated the formation of a labor organization known as the Western Cartridge Employees Independent Union, and that it thereafter dominated and interfered with the administration of said organization, contributed financial and other support to it, and recognized the same as the exclusive bargaining representative of the company's employees in written contracts dated August 12, 1937, and June 4, 1941; and

(2) That the company discouraged membership in the American Federation of Labor and encouraged membership in the Western Cartridge Employees Independent Union by discharging and transferring certain employees; and

(3) That, by the foregoing acts, by attempting to instigate the formation of the Western Cartridge Employees Association, by attempting to dissuade its employees from becoming or remaining members of the American Federa-

tion of Labor, by questioning its employees concerning their union affiliation, by soliciting and obtaining from its employees since July 5, 1935, individual employment contracts, including, among other things, limitations upon their right to strike and to engage in other concerted activities, and by other acts, the company interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

Thereafter, answers having been filed by the company and the Western Cartridge Employees Independent Union, pursuant to notice, a hearing was held at East Alton, Illinois, from December 8, 1941, to January 9, 1942, before a Trial Examiner designated by the Chief Trial Examiner of the National Labor Relations Board. On February 25, 1942, the Trial Examiner filed his Intermediate Report, copies of which were served upon all parties, and on April 7, 1942, the company and Western Cartridge Employees Independent Union filed exceptions to the Intermediate Report. Thereafter, pursuant to notice, and at the request of the company and the Western Cartridge Employees Independent Union, a hearing was held before the National Labor Relations Board at Washington, D. C., on June 11, 1942, for the purpose of oral argument, at which the company and the Western Cartridge Employees Independent Union and the American Federation of Labor were represented by counsel and participated in the argument. Thereupon, and on the 16th day of September, 1942, the National Labor Relations Board made and entered its decision and order making certain findings of fact, conclusions of law and an order, all as more specifically therein set forth and contained.

VENUE.

Petitioner, Western Cartridge Company, a corporation, is a Delaware corporation duly licensed to do business in the State of Illinois, with its principal office and place of

business in the City of East Alton, Illinois, and transacts business in the State of Illinois. The unfair labor practices alleged to have been committed by the Western Cartridge Company in the said complaint were alleged to have been committed in the State of Illinois. The Statute upon which venue is based is Section 10 (f) of the National Labor Relations Act, being Act of July 5, 1935, c. 372, 49 Stat. 449-457; 29 U. S. Code, Secs. 151-166; Public No. 198, 74th Congress.

RELIEF PRAYED.

The relief prayed for is that the said decision and order of the National Labor Relations Board be reviewed and set aside.

STATEMENT OF POINTS.

The points to be relied upon by the petitioner for the review and setting aside of the said decision and order are as follows:

1. The Board erred in affirming the ruling of the Trial Examiner denying a motion by the petitioner to make the complaint more definite by specifying the names of the organizations affiliated with the A. F. of L., membership in which the petitioner was alleged to have discouraged.

2. The Board erred in affirming the rulings of the Trial Examiner on the other motions and on the admissibility of evidence during the course of the hearing.

3. The Board erred in denying the motion of petitioner to reopen the record for the purpose of receiving additional evidence of benefits alleged to have been gained by the employees of the petitioner as the result of negotiations between the Western Cartridge Employees Independent Union and the petitioner.

4. The Board erred in finding that petitioner's employees were urged to execute the individual contracts of employment.

5. The Board erred in finding that the form of individual employment contract alleged to have been urged by the petitioner on its employees was and is, by its terms, an interference with the employees' right to engage in concerted activity as guaranteed in the Act.

6. The Board erred in finding that the petitioner's reintroduction of the individual employment contracts in 1933, and its efforts thereafter to have employees sign them, were due to a realization on its part of the restrictive effect of the contracts on the organizational activities of the employees, and to a desire to accomplish precisely that restrictive effect, and that it was the purpose and the effect of the contracts since their reintroduction to forestall union activity among petitioner's employees, and to create a permanent barrier to union organization among them.

7. The Board erred in finding that petitioner, by urging and persuading its employees to sign the individual contracts of employment, has, since July 5, 1935, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

8. The Board erred in finding that Olin made it clear to Sullivan that, before recognizing the Independent as a bargaining representative, the petitioner would have to be assured that the Independent's constitution and by-laws would not affect the individual contractual relationship existing between the petitioner and the bulk of its employees.

9. The Board erred in finding that at all times since its inception in 1937, the Independent, without objection by the petitioner, has engaged in organizational activities on company time and property, without finding, at the same time, that the same privilege has been accorded by the pe-

titioner to the various American Federation of Labor unions, as well as District 50 of the United Mine Workers of America, then affiliated with the C. I. O.

10. The Board erred in finding Francis Bunzy to be a credible witness.

11. The Board erred in finding that the Independent presented its declining membership problem to petitioner and asked for petitioner's assistance, and that petitioner's general manager Bassett made no definite commitment, but said that he would keep the matter in mind.

12. The Board erred in finding that during the latter part of December, 1940, Fred Olds, an organizer for the American Federation of Labor, made his first contact with employees of the petitioner.

13. The Board erred in finding that petitioner's General Manager Bassett stated to representatives of the Independent that if a notice of the granting of a 2 per cent wage bonus was posted in the plant giving the Independent credit for the increase it would bring the Independent's membership up, showing that the Independent was trying to do something for its members, and that such suggestion was accepted.

14. The Board erred in finding that the 2 per cent bonus increase was given about the same time that the American Federation of Labor appeared on the scene.

15. The Board erred in finding that the petitioner assisted and encouraged the Independent by arranging for it to take credit for obtaining the bonus increase.

16. The Board erred in finding that in the middle of January, 1941, the American Federation of Labor began to intensify its membership campaign among petitioner's employees.

17. The Board erred in finding that shortly after Local 22574 had demanded bargaining rights for employees in

the Smokeless Powder Division, and when it appeared likely that the A. F. of L. would extend its campaign to the Western side, the petitioner took further steps to strengthen and support the Independent.

18. The Board erred in finding that petitioner encouraged the Independent on the Western side and accompanied such encouragement by the discouragement of Local 22574 in the Smokeless Powder Division, for which the Independent was the recognized bargaining representative.

19. The Board erred in finding that during the first six months of 1941, and especially after Local 22574 had demanded bargaining rights, the petitioner repeatedly manifested its hostility to the A. F. of L.

20. The Board erred in crediting the testimony of each of the witnesses offered by the Board with respect to statements attributed to petitioner's supervisory employees, and in failing to give credit to the testimony offered by any of such supervisory employees in denial of the statements attributed to them.

21. The Board erred in finding that notwithstanding the result of the election conducted by the Board on May 26, 1941, in petitioner's Smokeless Powder Division, the petitioner continued to deduct Independent membership dues from the wages of employees in the Smokeless Powder Division.

22. The Board erred in finding that at about August 5, 1941, the Independent revived its campaign on the Western side and openly solicited membership applications on company property and time, without at the same time finding that such privilege was not denied to the various American Federation of Labor unions or District 50 of the United Mine Workers of America, affiliated with the C. I. O.

23. The Board erred in concluding that in 1933, prior to the effective date of the Act, the petitioner successfully

smothered the first efforts of its employees to seek self-organization.

24. The Board erred in concluding that the petitioner has, at all times since 1933, including the period following the effective date of the Act, made it clear to its employees that all of them were expected to sign the individual employment contracts.

25. The Board erred in concluding that for approximately four years the individual employment contracts produced the desired result.

26. The Board erred in concluding that general manager Bassett approved the idea of the formation of the Independent and that such approval spurred such formation.

27. The Board erred in finding that foreman Robertson's statement to Bunzy and Bassett's assurance to Taylor made it clear that the petitioner was in favor of the Independent and welcomed its formation.

28. The Board erred in concluding that the petitioner favored the Independent because it would serve as a means of combating organization by an outside union and perpetuating the individual contract system.

29. The Board erred in concluding that the petitioner summarily rejected the proposal of the Independent for a working agreement and substituted its own ideas on bargaining in the form of the so-called basic agreement.

30. The Board erred in concluding that bargaining pursuant to the terms of the basic agreement was not collective bargaining within the meaning of the Act.

31. The Board erred in concluding that it is clear from the record that the petitioner made acceptance of the individual contracts a condition precedent to bargaining with the Independent.

32. The Board erred in concluding that the condition

(acceptance of the individual contracts) was merely accepted by the Independent, and its acquiescence demonstrated its complete subservience to the petitioner and its inability to act as a true bargaining representative for the employees.

33. The Board erred in finding that the Independent in effect relinquished the right to strike, endorsed the individual contracts, and acknowledged that the contracts were paramount to the guarantee of collective bargaining contained in the Act.

34. The Board erred in concluding that a bona fide labor organization, not dominated by the petitioner, would not have thus joined with the petitioner in the execution of the basic agreement.

35. The Board erred in concluding that the petitioner's domination of the Independent is indicated by the fact that the petitioner failed for almost four years to conclude a formal working agreement with the Independent covering wages, hours and conditions of employment.

36. The Board erred in concluding that the petitioner gave the Independent the support it believed necessary to protect the Independent's position.

37. The Board erred in concluding that in the latter part of December, 1940, when the A. F. of L. was making plans to organize the plant, petitioner arranged for the Independent's receiving credit for obtaining a bonus increase.

38. The Board erred in concluding that in the early part of 1941 the petitioner sought to prevent the spread of the A. F. of L's influence to the Western side by giving the Independent working agreements covering the brass mill and the casting shop.

39. The Board erred in concluding that while the petitioner was assisting the Independent, it discouraged em-

ployees in the Smokeless Powder Division who were desirous of being represented by Local 22574, by displaying its hostility toward that union, by disparaging its leadership, by urging the withdrawal of its adherents, and by advising employees to vote against Local 22574 in the Board election of May 26, 1941.

40. The Board erred in finding and concluding that by its entire course of conduct the petitioner encouraged, supported and maintained the Independent in order to impede and, if possible, prevent genuine self-organization of the petitioner's employees, and that such an organization is incapable of functioning as a true collective bargaining representative.

41. The Board erred in finding that the petitioner dominated and interfered with the formation and administration of the Independent and contributed support to it, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

42. The Board erred in finding that Superintendent Day made the statements attributed to him by Elliott.

43. The Board erred in failing to find that Elliott was responsible for slowing up production and for the poor quality of work in the casting shop.

44. The Board erred in finding that there was no showing made in the record that Elliott's attitude toward and remarks about the petitioner and working conditions were in fact the cause of other employees' bad work, or that there was any reasonable basis for the petitioner believing so, and in finding that it is as reasonable to attribute the alleged decrease in production to the widespread dissatisfaction with working conditions as to Elliott's attitude and remarks.

45. The Board erred in finding that Elliott's critical attitude was used by the petitioner as a pretext to justify his discharge.

46. The Board erred in finding that Elliott was discharged on July 25, 1941, because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333.

47. The Board erred in finding that by thus discharging Elliott the petitioner discriminated with regard to his hire and tenure of employment, and thereby discouraged membership in Local 333, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

48. The Board erred in making the Conclusions of Law numbers 2 to 6, inclusive, and each of them, set forth and contained in said Decision and Order.

49. The Board erred in making and entering the cease-and-desist order contained in Paragraph 1, subparagraphs (a) to (f), inclusive, of the Order, set forth and contained in said Decision and Order.

50. The Board erred in making and entering the order directing affirmative action contained in Paragraph 2, subparagraphs (a) to (f), inclusive, of the Order, set forth and contained in said Decision and Order.

R. H. McROBERTS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Attorney for Petitioner.

BRYAN, WILLIAMS, CAVE & McPHEETERS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Of Counsel.

No 163 (B)

Office - Supreme Court, U. S.
FILED
JUL 14 1943
CHARLES ELMORE CROPLEY
CLERK

United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. 8155
Civil.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

WAYNE ELY,
Tenth Floor Commerce Building,
St. Louis, Missouri,
Attorney for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

SUBJECT INDEX.

	Page
Petition to review and set aside an order of the National Labor Relations Board	1
Statement	2
The complaint	3
Jurisdiction	4
Statement of points relied upon	4
Prayer	9

United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. .....
Civil.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable Judges of the United States Circuit Court of Appeals, Seventh Circuit:

Comes now Western Cartridge Employees' Independent Union, a voluntary, unincorporated association and labor union, and prays the Court to review and set aside a certain decision and order of the National Labor Relations Board entered on September 16, 1942, in case No. C-2123, entitled: "In the Matter of Western Cartridge Company, a Corporation, and American Federation of Labor and its affiliated organizations."

STATEMENT.

On November 19, 1941, a complaint was filed by the American Federation of Labor and its affiliated organizations charging the Western Cartridge Company with violation of certain provisions of the National Labor Relations Act, and on said date the National Labor Relations Board, acting by and through its Regional Director for the Fourteenth Region, issued its complaint against Western Cartridge Company, alleging that said company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. A copy of the complaint and notice of hearing thereon was served on petitioner, and a hearing was held at East Alton, Illinois, from December 8, 1941, to January 9, 1942, before Horace A. Ruckle, Trial Examiner designated by the Board to conduct such hearing and to report to the Board thereon. The Independent intervened in the proceedings and participated in the hearing. On February 25, 1942, the Trial Examiner filed his intermediate report with the Board, finding that Western Cartridge Company had been guilty of the unfair labor practices charged, and recommended, among other things, that the Independent Union be disestablished as bargaining representative of any of the employees of Western Cartridge Company and that said Company be ordered to withdraw all recognition from the Independent as such representative. And on April 7, 1942, the Independent filed with the Board its exceptions to said report. Thereafter, and on June 11, 1942, at the request of Western Cartridge Company and the Independent Union, a hearing was held by the Board at Washington, D. C., at which hearing counsel for all parties were present and participated in oral argument before the

Board. On September 16, 1942, the Board filed and entered its decision and order in the case.

In connection with its said decision and order, the Board made certain findings of fact and conclusions of law, and made certain orders, which Western Cartridge Employees' Independent Union prays this Honorable Court to review and set aside. The findings, conclusions and orders of which the Independent complains will more specifically appear herein under the Statement of Points Relied Upon.

THE COMPLAINT.

The specific charges concerning which petitioner complains are, in substance, as follows:

(1) That Western Cartridge Company instigated the formation of the Independent Union, and thereafter dominated and controlled said union by interfering with its administration, and furnishing financial support to it;

(2) That Western Cartridge Company recognized the Independent Union as bargaining representative for its production and maintenance employees;

(3) That Western Cartridge Company encouraged its production and maintenance employees to become members of the Independent Union;

(4) That Western Cartridge Company requested and coerced its employees to enter into individual contracts of employment with the Company;

(5) That by the individual contracts of employment Western Cartridge Company limited and restricted the right of its employees to strike, and otherwise interfered with the rights guaranteed its employees in Section 7 of the Act.

JURISDICTION.

Western Cartridge Company is a corporation licensed to do business in the State of Illinois, having its principal office and place of business at East Alton, Illinois. Western Cartridge Employees' Independent Union is a voluntary, unincorporated labor organization, whose membership is made up of production and maintenance employees of said Company. Said Independent Union, petitioner herein, maintains its office at East Alton, Illinois. The unfair labor practices were allegedly committed in the State of Illinois, and the jurisdiction of this Court is invoked under the provisions of Section 10 (f) of the National Labor Relations Act.

STATEMENT OF POINTS RELIED UPON.

(1) The Board erred in failing to notice, or pass upon, the refusal of the Trial Examiner to permit individual members of the Independent Union to testify with respect to the reasons why they joined the Independent, and the circumstances under which they joined it.

(2) The Board erred in failing to notice, or pass upon, the refusal of the Trial Examiner to permit individual members of the Independent Union to testify that they were not solicited by any foreman, superintendent, or by any official or other representative of Western Cartridge Company to become members of the Independent, and that no foreman, superintendent, official or other representative of the Company had ever at any time asked, suggested or urged them to join the Independent, or attempted in any way to direct, control or affect their actions as members of the Independent.

(3) The Board erred in failing to find and decide that the Trial Examiner had erred in refusing to receive the

testimony of the individual members of the Independent with respect to the reasons why and the circumstances under which they joined the Independent, and in refusing to find and decide that the Trial Examiner had erred in refusing to permit the members of the Independent to testify that no foreman, superintendent, official or other representative of the Company had at any time asked, suggested or urged them to join the Independent, or had ever attempted in any way to direct, control or affect their actions as members of the Independent Union.

(4) The Board erred in not ordering the case reopened for the purpose of admitting and receiving testimony of the individual members of the Independent Union with respect to the reasons why and the circumstances under which they had joined the Independent, and for the purpose of admitting and receiving the testimony of the individual members of the Independent that no foreman, superintendent, official or other representative of the Company had at any time asked, suggested or urged them to join the Independent, or had attempted in any way to direct, control or affect their actions as members of the Independent.

(5) The Board erred in finding and deciding that the formation of the Independent Union was instigated by Western Cartridge Company.

(6) The Board erred in finding and deciding that Western Cartridge Company had dominated and controlled the Independent Union since its formation, and had interfered with the administration of the affairs of the Independent.

(7) The Board erred in finding and deciding that the production and maintenance employees of Western Cartridge Company, including the members of the Independent Union, were coerced into signing and entering into individual contracts of employment with the Company.

(8) The Board erred in finding and deciding that the individual contracts of employment placed any restrictions on the rights of the production and maintenance employees of Western Cartridge Company, including the members of the Independent Union, to strike, or to engage in any other concerted activity.

(9) The Board erred in finding that the individual contracts entered into between Western Cartridge Company and its production and maintenance employees were in any respect unfair to the employees.

(10) The Board erred in failing and refusing to find that the individual employment contracts entered into between Western Cartridge Company and its production and maintenance employees were desired by the employees, and were beneficial to such employees.

(11) The Board erred in finding and deciding that Western Cartridge Company afforded or furnished financial support to the Independent.

(12) The Board erred in finding and deciding that the terms and conditions of a so-called basic agreement entered into by and between Western Cartridge Company and the Independent Union were dictated by the Company.

(13) The Board erred in finding and deciding that Western Cartridge Company summarily rejected the Independent Union's proposal for a working agreement and substituted its own ideas of bargaining in the form of the so-called basic agreement.

(14) The Board erred in finding and deciding that the individual contracts of employment were illegal; that there was any provision in said individual contracts that in anywise restricted or interfered with the dealings between the Independent Union and the Company.

(15) The Board erred in finding and deciding that there could be no collective bargaining on the part of Western Cartridge Company's employees because of the execution of the individual contracts of employment.

(16) The Board erred in ordering Western Cartridge Company to cease and desist from giving effect to the individual contracts of employment with its production and maintenance employees, or to any modification, continuation, extension, or renewal thereof, and from requesting and permitting its employees to enter into any similar contracts of employment.

(17) The Board erred in ordering Western Cartridge Company to cease and desist from recognizing Western Cartridge Employees' Independent Union as the representative of any of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, rates of pay, hours of employment, or other conditions of employment.

(18) The Board erred in ordering Western Cartridge Company to cease and desist from giving effect to its agreements of August 12, 1937; March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with the Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(19) The Board erred in ordering Western Cartridge Company to withdraw all recognition from the Independent Union as the representatives of any of the Company's employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and to disestablish Western Cartridge Employees' Independent Union as such representative.

(20) The Board erred in ordering Western Cartridge Company to give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension or renewal thereof, that the Company will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with the Company or to relinquish in any manner his right to engage in concerted activity.

(21) The Board erred in ordering Western Cartridge Company to post throughout its plant at East Alton, Illinois, notices to its employees stating: (1) that the Company will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of the order of the Board; (2) that the Company will take the affirmative action set forth in paragraphs 2 (a) to (d) of the order of the Board; and (3) that the Company's employees are free to become or remain members of Chemical Workers Local Union No. 22,574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor.

(22) The Board erred in not ordering Western Cartridge Company to notify its production and maintenance employees that they are free to become or remain members of Western Cartridge Employees' Independent Union.

In each and every matter above mentioned and in respect of all matters related thereto, the rights of Western Cartridge Employees' Independent Union, and each of its members, under the National Labor Relations Act, and the rights of said Independent Union and each of its members under the Constitution of the United States of America and under the Constitution of the State of Illinois have been ignored, transgressed, set aside, and interfered with.

PRAYER.

For the reasons herein stated, Western Cartridge Employees' Independent Union, petitioner herein, respectfully prays this Honorable Court to review and set aside the said order of the National Labor Relations Board entered on September 16, 1942.

WAYNE ELY,
Tenth Floor Commerce Building,
St. Louis, Missouri,
Attorney for Western Cartridge Employees' Independent Union.